

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
BRAULIO THORNE, :
Plaintiff, :
-against- : 23 Civ. 776 (LGS)
:
CAPITAL MUSIC GEAR, LLC, :
Defendant. : ORDER
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, the Civil Case Management Plan and Scheduling Order, issued March 22, 2023, requires the parties to complete fact discovery by July 27, 2023.

WHEREAS, on May 12, 2023, the parties filed a joint stipulation. In the stipulation, the parties proposed a briefing schedule for Defendant's anticipated motion to dismiss the Amended Complaint and stated that they agreed to stay discovery until the motion is adjudicated. On May 16, 2023, the Court So Ordered the stipulation, except that the parties' agreement regarding a stay of discovery was stricken.

WHEREAS, the Court's general practice is not to stay discovery during the pendency of a motion to dismiss.

WHEREAS, on May 30, 2023, Defendant filed a motion to dismiss the Amended Complaint. The same day, Defendant also filed a letter motion seeking a stay of discovery.

WHEREAS, “[a] motion to dismiss does not automatically stay discovery.” *Bennett v. Cuomo*, No. 22 Civ. 7846, 2023 WL 2021560, at *1 (S.D.N.Y. Feb. 15, 2023). “If a motion to dismiss is pending, courts typically consider several factors in determining whether to stay discovery; including: (1) whether a defendant has made a strong showing that the plaintiff’s claim is unmeritorious, (2) the breadth of discovery and the burden of responding to it, and (3)

the risk of unfair prejudice to the party opposing the stay.” *Id.* at *2 (cleaned up). It is hereby **ORDERED** that, in accordance with the previously-agreed briefing schedule, Plaintiff shall file his opposition to Defendant’s motion to dismiss by **June 23, 2023**. Defendant shall file its reply by **June 30, 2023**. It is further

ORDERED that, under the particular circumstances of this case as stated Defendant’s letter, and considering the strength of Defendant’s motion, Defendant’s request for a stay of discovery is **GRANTED**. All deadlines contained in the Civil Case Management Plan and Scheduling Order are **ADJOURNED** sine die.

Dated: May 31, 2023
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE